IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 249 OF 2000
WITH
CIVIL APPLICATION NO. 3041 OF 2000

Shri Abaji Narayan Nimaj ..Appellant

Vs.

1. Shri Mahadeo Narayan Nimaj and ors. ..Respondents

Mr. V.B. Rajure for appellant.
Mr. H.E. Palve for respondent no.1 absent.

CORAM: B.H. MARLAPALLE, J.

Date : March 21, 2007.

P.C.:

1. Heard Mr. Rajure the learned counsel for the appellant-original defendant no.1. This second appeal arises from the decree passed in Regular Civil Suit No. 644 of 1982 by the learned IInd Joint Civil Judge, Junior Division, Satara on 29//6/1989 and confirmed by the learned IVth Additional District Judge, Satara vide his judgment and order dated 28/9/1999.

2. The present respondent no.1 had instituted Regular Civil Suit No. 644 of 1982 for partition in

the suit property and for possession of his share in all the seven properties mentioned at Sr.Nos.1 to 7 in the plaint. It was stated by him that the properties at Sr.Nos.1 to 4 were ancestral properties between the parties and properties at Sr.Nos.5 to 7 were the properties received by the father of the plaintiff and defendant no.1 under the Bombay Tenancy and Agricultural Lands Act, 1948 as a protected tenant. The defendant no.1 had approached the civil court and while admitting that the properties at Sr.Nos.1 to 4 were the ancestral properties, it was contended that the properties at Sr.Nos.5 to 7 could not be partitioned as the proceedings under the Bombay Tenancy Act had not concluded so as to issue the certificate of ownership under Section 32M of the said Act in favour of Narayan Nimaj and, in fact, he had prayed for the matter being referred to the tenancy court in respect of the said properties. At the same time, the defendant no.1 had claimed that the properties at Sr.Nos.1 to 4 were already partitioned. The trial court framed a specific issue, whether the properties at Sr.Nos. 4 to 7 were the self acquired properties of the defendants and whether the

defendants proved that there is a partition in the year 1972 in respect of the other properties. Both the issues were answered in the negative by the trial court and ultimately the trial court held that the plaintiff was entitled to 4/9th share in the suit properties. Said view has been confirmed by the Lower Appellate Court by dismissing Regular Civil Appeal No. 393 of 1989 and Regular Civil Appeal No. 564 of 1989. The Regular Civil Appeal No. 393 of 1989 was filed by the original defendant no.1 - the present appellant and the Regular Civil Appeal No. 564 of 1989 was filed by the original defendant nos.2 to 5.

3. Admittedly, the plaintiff and defendant no.1 are the sons of late Narayan Nimaj and in respect of the properties at Sr.Nos.5 to 7, the statutory purchase within the meaning of Section 32G of the Bombay Tenancy Act was concluded. The purchase price also was remitted and the ownership under Section 32M of the Tenancy Act was also issued in favour of Narayan. Defendant No.1 had claimed that he was working at Mumbai and on his retirement he had received pensionery benefit in excess of Rs.22,000/-

and from the said amount he had given money to Narayan to pay the purchase price. Both the courts below have not accepted the contentions that there was necessity, in law, to refer the issue of ownership of the tenanted property under the Bombay Tenancy Act and that was the only issue which was sought to be reagitated in this second appeal. However, the same has already been decided by this court in the case of Savitra Bapu Shinde and ors. vs. Rau Rama Shinde and anr. **[2006 (2) Mh.L.J. 243]**.

4. Under these circumstances, no substantial question of law arises for the consideration of this court in the instant second appeal and, therefore, the same must fail at the admission stage itself.

5. The appeal is hereby dismissed in limine.

6. Civil Application No. 3041 of 2000 does not survive and the same shall stand disposed as such. Ad-interim order, if any, stands vacated.

(B.H. Marlapalle,J.)